

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos 10056, 10057
and 10058 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DIGVIJAY CEMENT COMPANY LIMITED

Versus

ASSISTANT COLLECTOR

Appearance:

MR KS NANAVATI for NANAVATI ASSOCIATES for Petitioners
Ms AMY YAGNIK, AGP for Respondent Nos. 1 to 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/02/99

COMMON ORAL JUDGEMENT

Rule. These three petitions filed under Articles 226 and 227 of the Constitution involve common questions of law and facts and are filed by the same parties. With the consent of the learned counsel for the parties, the petitions are, therefore, taken up for hearing and final disposal today.

2. In these petitions, the petitioner-Company has

challenged the judgments and orders dated 31.8.1998 passed by the Gujarat Revenue Tribunal in revision application Nos. TEN.B.R. 2, 3 and 4 of 1998 under the provisions of the Saurashtra Gharkhed (Tenancy Settlement & Agricultural Lands) Ordinance, 1949 (hereinafter referred to as "the Ordinance"). The Tribunal rejected all the three revision applications on the ground that the revision applications were time barred and that no sufficient cause was shown for explaining the delay of 7 years and 4 months.

3. The facts leading to filing of these petitions, as averred by the petitioners, are as under :-

The petitioner-Company had purchased certain lands of village Chorvadi, Taluka Lalpur, District Jamnagar on 21.5.1984 by registered sale deeds from three different occupants of the lands. After holding an inquiry under Section 54 of the Ordinance and Rule 108(6) of the Bombay Land Revenue Rules, by his common order dated 8.1.1990 the Assistant Collector held that the petitioner-Company was not an agriculturist within the meaning of the provisions of the Ordinance and, therefore, there was violation of Section 54 of the Ordinance which prohibits transfer of agricultural land to non-agriculturist. The Collector dismissed the appeals on 12.12.1990. The petitioner-Company thereafter filed a suit for a declaration that the orders passed by the authorities were erroneous and illegal and also for a declaration that the petitioner-Company was an agriculturist. The petitioner-Company also prayed for permanent injunction. The suit was dismissed by the learned Civil Judge, Jamnagar on 1.7.1997, as after giving a finding that the Civil Court had no jurisdiction to grant the reliefs prayed for and otherwise also it was held that the plaintiffs had no case on merits. The petitioner-Company thereafter preferred the above numbered three revision applications on 6.4.1998 before the Tribunal. The Tribunal heard the matters on the preliminary issue of limitation and dismissed all the three revision applications on the ground that there was no justification for condoning delay of more than 7 years. In these petitions, the petitioner-Company has challenged the aforesaid judgments dated 31.8.1998 of the Tribunal as also the orders of the Assistant Collector and Collector passed on 8.1.1990 and 12.12.1990 respectively.

4. As far as the challenge to the judgments of the Tribunal is concerned, the learned counsel for the petitioner-Company has made the following submissions :-

(i) After receiving the order dated 12.12.1990 of the Collector in appeal, the petitioner-Company was advised by its learned advocate at Jamnagar to file a civil suit and accordingly the petitioner-Company had filed civil suits in the year 1991. Those suits came to be dismissed in July, 1997. The learned counsel further states that thereafter the petitioner-Company had applied for certified copy of the judgment and decree on 8.10.1997. The same was made available to the petitioner-Company on 6.1.1998. Thereafter on 6.4.1998 the petitioner-Company had filed the revision applications and, therefore, there was sufficient cause shown by the petitioner-Company for the delay of 7 years and 4 months in filing revision applications before the Tribunal.

(ii) The Tribunal has erred in not appreciating that in legal matters the petitioner would go by the advice of its learned advocate at Jamnagar. Affidavit dated 9.3.1998 was also filed by the said learned advocate which is also produced at Annexure "G" to these petitions (page 86 of the paper book). Hence, the Tribunal ought to have accepted the said explanation offered by the learned advocate and condoned the delay.

(iii) In any view of the matter, on the same facts pleaded by the petitioner-Company in a similar matter the Tribunal had found the same explanation offered by the petitioner-Company as sufficient cause for condoning the delay and the said judgment of the Tribunal delivered on 9.12.1994 in revision application No. TEN.B.R. 28/94 is produced at Annexure "C" to these petitions. Of course, review application No. 2/95 is filed before the Tribunal in respect of the said judgment but the fact remains that the delay was condoned by the Tribunal. In that case, the orders dated 21.3.1988 and 22.4.1991 passed by the Deputy Collector and Collector, Jamnagar were challenged in a civil suit under the advice of the learned advocate of the petitioner-Company at Jamnagar and, therefore, there was delay of 3 to 4 years in filing the said revision application and the Tribunal accepted the explanation offered by the petitioner-Company that it had acted under the advice of its learned advocate.

It was, therefore, submitted by the learned counsel for the petitioner-Company that in the facts of this case, the Tribunal ought to have condoned the delay and entertained the revision applications on merits.

5. On the other hand, the learned AGP supported the order of the Tribunal on the grounds which had already appealed to the Tribunal.

6. Having heard the learned counsel for the parties, it appears that while the delay of 7 years and 4 months would certainly seem to be gross delay and ordinarily the Tribunal might have been justified in condoning the delay of such long period, however, in the instant case, the order dated 12.12.1990 of the Collector in appeal was challenged by the petitioner-Company in a suit filed in 1991 and it was on account of pendency of the suit for 7 years that the petitioner-Company did not approach the Tribunal earlier. It is true that the question still was whether the petitioner-Company could be said to be bona fide prosecuting the suit. In the facts and circumstances of the case and particularly in view of the fact that the petitioner's holding of the lands in question was at stake, it is not possible to give a finding that the petitioner-Company was not bona fide prosecuting the suits when it had acted under the advice of its learned advocate at Jamnagar. In view of the aforesaid facts and circumstances and in view of the provisions of Section 14 of the Limitation Act, 1963 which provide for exclusion of time during which the plaintiff had been prosecuting with due diligence another civil proceeding whether in a court of first instance or of appeal or revision against the defendant has to be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect or jurisdiction or other cause of a like nature, is unable to entertain it. The provisions of Section 14 and in any case the principle underlying the same would certainly apply to the facts of the case at hand, more particularly because in another matter of the same petitioner-Company, the Tribunal did find that the petitioner-Company acting under the advice of the concerned learned advocate at Jamnagar was bona fide prosecuting the civil suit for challenging the similar orders passed by the Assistant Collector and Collector which were also passed on the ground of violation of provisions of Section 54 of the Ordinance.

7. Since the judgments and orders are being set aside only on the ground that the Tribunal ought to have

entertained the revision applications on merits, it is not necessary to go into the merits of the challenge raised by the petitioner-Company to the orders of the Assistant Collector and the Collector as the same are the subject matter of the revision applications which shall now be decided by the Tribunal on merits.

8. In view of the above discussion, all the three petitions are allowed and the judgments and orders dated 31.8.1998 passed by the Tribunal in revision application Nos. TEN.B.R. 2, 3 and 4 of 1998 are hereby quashed and set aside with a direction to the Tribunal to hear the three revision applications on merits in accordance with law.

8. Rule is made absolute to the aforesaid extent with no order as to costs.

February 11, 1999 (M.S. Shah, J.)

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